

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

OCT 10 2006

*Joseph Haas*  
CLERK

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EDWIN ALLEN, et al.,

Plaintiffs,

-VS-

BROWN CLINIC, et al.

Defendants.

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CIV. 05-1021

ORDER AND OPINION

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The plaintiffs have filed a "motion for punitive damages" (Doc. 44). The motion is surplusage.

The South Dakota statute cited by plaintiffs, SDCL 21-1-4.1, is a matter of procedure. I have previously ruled in a number of cases that a federal court is not bound by such statutes. During the course of the trial, I will rule on matters of evidence. At the conclusion of the plaintiffs' case and perhaps at the end of the trial, I will decide what will happen with regard to all claims, including claims for punitive damages. A state legislature cannot dictate to a federal court that the court must apply any particular burden of proof in certain actions. All questions to be submitted to the jury will require proof by a preponderance of the evidence, nothing more and nothing less. I do not intend to conduct any separate hearing.

The motion should be denied as surplusage.

Now, therefore,

IT IS ORDERED that the motion for punitive damages (Doc. 44) is denied as surplusage.

Dated this 10<sup>th</sup> day of October, 2006.

BY THE COURT:

*Charles B. Kornmann*  
CHARLES B. KORNMANN  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY: *Barbara J. Pappas*

DEPUTY

(SEAL)